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# CHAPTER 4

## Implementation

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*Ambler River, looking north*

# Chapter 4

## IMPLEMENTATION

### Introduction

This chapter discusses specific actions needed to implement the plan. These actions include proposed land selections, classifications, mineral orders, municipal entitlements, and procedures for plan amendment. This chapter also includes recommendations for further study, field staff, cooperative agreements, and additional access. It also describes the public trust doctrine.

### Proposed State Land Selections

This plan identifies areas for future state land selections. Recommendations and reasons for proposing these selections are described below. In general, lands are proposed for selection either to consolidate state land ownership and improve the efficiency of state land management, or because the land has high resource values that merit state management. The selections are shown on the management unit maps in Chapter 3 and on Map 4.1 in this chapter. No relinquishments are proposed.

The state is entitled to select additional lands from vacant, unappropriated, and unreserved federal lands. In the Northwest Area, there are over six million acres that the state could select. Most of this land is in five general areas: the Squirrel River drainage, south of the Kobuk River, east of Buckland, the central Seward Peninsula, and along eastern Norton Sound. Most of these lands have low surface and subsurface resource values and are not desirable for state selection. However, some lands with high resource values or strategic locations merit state selection. Almost 500,000 acres in 14 parcels are recommended for selection. Some of these parcels have already been selected by Native corporations. If the state top-files (files a selection on Native-selected land), the state selection would be valid only if the Native selection were relinquished or rejected.

The total amount of additional land the state may select is limited. Therefore, the Department of Natural Resources (DNR) will determine additional lands to be selected in the Northwest Area through a statewide process that will evaluate proposed selections relative to opportunities for additional selections throughout the state.

Parcels proposed for selection are listed below, with their approximate acreage, the reason for selection, and the unit in which they are located. The subunit designations are shown on the management unit maps, and descriptions in Chapter 3 state the management intent for these lands if they are conveyed to state ownership.

**Lisburne Peninsula (Units 1 and 2).** The plan recommends selecting several parcels totalling about 100,000 acres on the Lisburne Peninsula. These lands should be selected for their high mineral, coal, or oil and gas potential, and to consolidate land ownership patterns. The state should also determine if any other lands are available for selection as a result of recent land exchanges between the Arctic Slope Regional Corporation and the federal Bureau of Land Management (BLM). As a result of these exchanges, land with mineral or oil and gas potential may have been transferred back to BLM ownership. Also, one small parcel in Unit 2 is selected near the coast, south of Kivalina to consolidate land ownership.

**Kobuk River (Unit 3).** Two parcels east of Ambler, about 90,000 acres, should be top-filed over existing Native selections. Top-filing would consolidate ownership if the land is not conveyed to the Native corporation. These areas have high mineral, habitat, and human use values.

**Seward Peninsula (Units 2, 4, and 6).** The plan recommends selections in four areas on the Seward Peninsula: near the western tip of the peninsula, for mineral values and to consolidate

land ownership; along the north end of the Teller Road, because of accessibility, mineral values, grazing potential, and to consolidate land ownership; in the Mt. Osborn area near the Kougarok Road, because of high mineral values, high public recreation values, and accessibility; and in the middle Koyuk River, because of mineral, wildlife, access, subsistence, and recreation values. These selections contain about 270,000 acres in Unit 4 and about 95,000 acres in Unit 6. A small parcel (1,280 acres) is also selected in the southern part of Unit 2 to top-file on Native selections along the Buckland River southeast of Buckland. This selection would provide access and consolidate land ownership if the land is not conveyed to Native ownership.

## Land Use Classifications

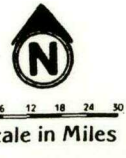
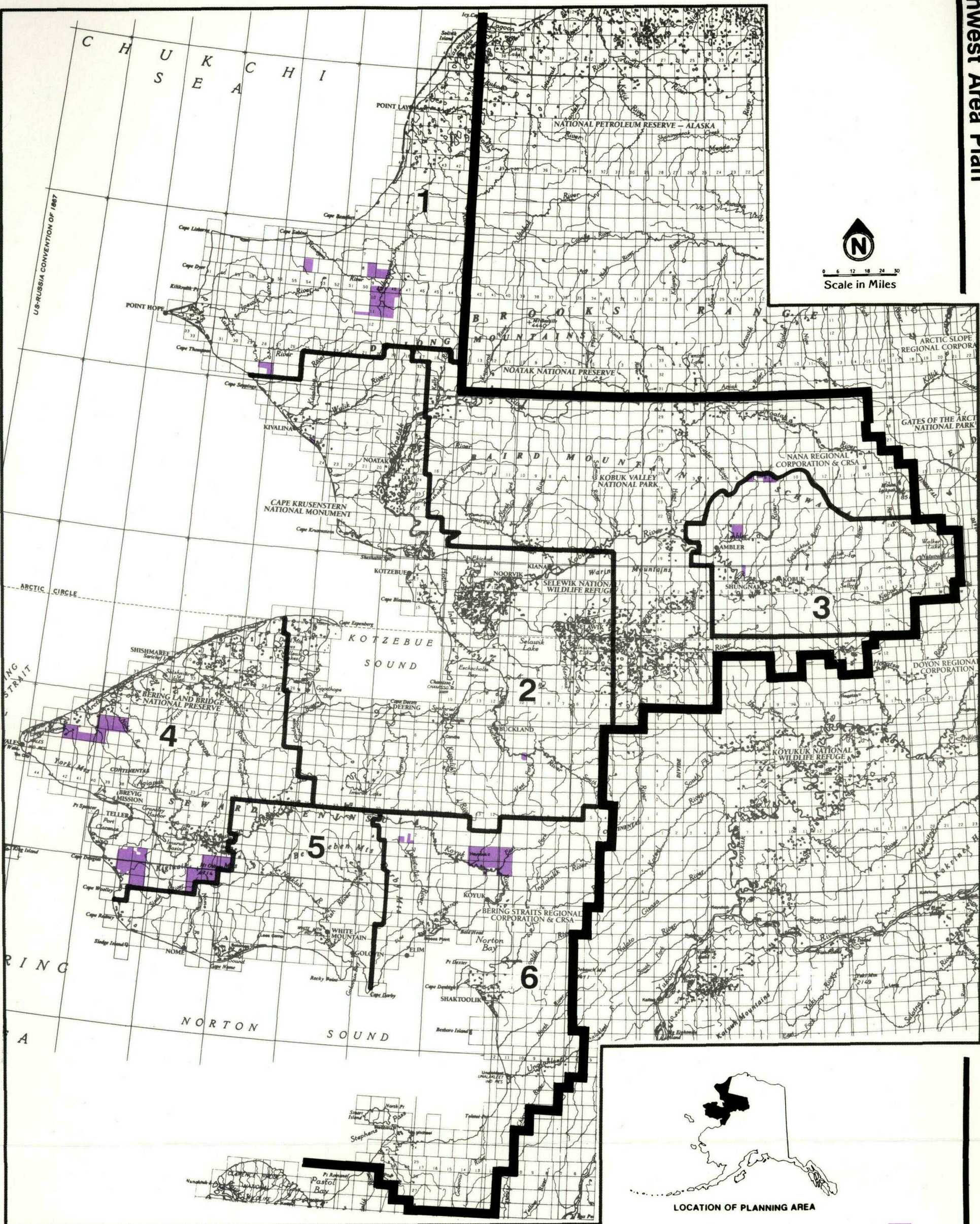
This plan establishes primary and secondary land use designations for state land in the Northwest Area. To implement the plan on state land, DNR must classify land into the classification categories in 11 AAC 55 in a way that reflects the plan intent. Land classifications are recorded on state status plats, and are the formal record of the primary uses for which each parcel of state land will be managed. The plan serves as the final finding by the Commissioner of DNR for land classifications for state land in the Northwest planning area. The primary surface land use designations in Chapter 3 will be converted to classifications shown in Table 4.1 (see Appendix G for acreages).

**Table 4.1 Conversion of Primary Use Designations to Classifications**

Primary Use Designations	Classifications
Coal/Habitat and harvest lands	Coal Land, Wildlife Habitat Land
General use tidelands	Resource Management Land
General use uplands	Resource Management Land
Habitat and harvest tidelands	Wildlife Habitat Land
Habitat and harvest uplands	Wildlife Habitat Land
Habitat and harvest/Recreation lands	Public Recreation Land, Wildlife Habitat Land
Mineral lands	Mineral Land
Minerals/Habitat and harvest lands	Mineral Land, Wildlife Habitat Land*
Settlement	Settlement

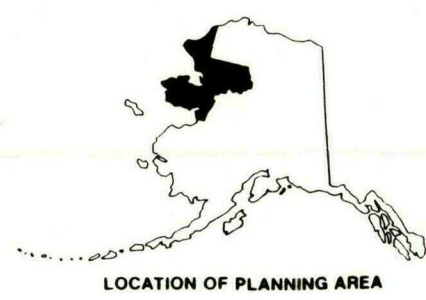
\*For Subunit 2c, the designation for the Kugruk River area, including Chicago Creek, will be classified to include Coal Land.





SUMMARY OF  
NEW SELECTIONS

- Areas recommended for state selection
- MANAGEMENT UNIT BOUNDARY
- AREA PLAN BOUNDARY





## Mineral Orders

This plan identifies areas that will be open and closed to new mineral entry. To implement closure decisions, mineral closing orders were prepared by DNR and signed by the commissioner. The final finding for these orders is in Appendix H, *Mineral Orders for the Northwest Area Plan*.

## Municipal Entitlement

**Municipal Entitlement.** The Municipal Entitlement Act (AS 29.65) establishes state land classification categories that determine a municipality's general grant land entitlement and that are available for transfer to a municipality. Under existing laws, the size of a municipality's entitlement is ten percent of the vacant, unappropriated, unreserved (VUU) land in the municipal boundaries, not to exceed 20 acres per capita. In the Northwest Area, there is abundant land in the VUU categories. Entitlement will probably be limited by population rather than by land classification.

**Classification.** The Northwest Area Plan has proposed classifications for the state lands within the planning area boundaries (see *Land Use Classifications* in this chapter). Classifications have been based on the best information available during the planning process at the scale appropriate to the planning effort, generally 1:250,000. These classifications are broad and have not taken into account future transfer of land to municipalities. Much land is classified in categories not available for transfer, such as Wildlife Habitat Land and Mineral Land. However, settlement of municipal entitlements is a high priority of the department and current classifications will not preclude considering of parcels of land for reclassification and transfer to a municipality.

When a municipality incorporates under state law, it may select state land within its boundaries that, except for classification, otherwise meets the definition of vacant, unappropriated, unreserved land under AS 29.65. When such lands are selected, DNR and the Department of Fish and Game will do a more detailed, site-specific analysis of the resource values. This analysis may

result in changing a classification to one that is available for transfer. Changes in designations and classifications will require plan amendment and reclassification before the selection is approved.

For example, river corridor lands that are classified Wildlife Habitat/Public Recreation are not available for transfer. A more detailed review of habitat values may show that parts of the corridor are suitable for local management either because the resource values do not merit state retention or because the land is not essential to the overall management intent for the area. Where this is the case, reclassification of part of the land may be recommended to allow for land transfer. Transfer to a municipality will not be approved until the recommended changes have been publicly reviewed through the amendment and reclassification processes.

**Existing Boroughs.** The Northwest Arctic Borough was established in 1986, one year after the beginning of the Northwest Area Plan. The borough did not want the Northwest Area Plan to restrict its municipal entitlements. The borough is currently identifying state land areas of interest for municipal selection. The borough will review its interest areas with borough residents and submit final selections to DNR by January 1990. Additionally, the 1987 amendments to the municipal entitlement act allow the North Slope Borough to select 89,000 acres from state lands within its boundary. To facilitate the transfer of lands to the boroughs, DNR will defer classification of preliminary areas of interest for the Northwest Arctic Borough selection (approximately 450,000 acres), and for the North Slope Borough (approximately 160,000 acres), until the borough selections are formally submitted. Until that time, preliminary interest areas will be managed in accordance with the policies, guidelines, and management intent described in the Northwest Area Plan. Following receipt of the formal selections, lands not selected by the borough will be classified according to the plan designations in the management units and as listed in Chapter 4, *Land Use Classifications*. If the borough selection process is extended, the classification of the preliminary interest areas should also be extended.

**State Interests.** As with all municipal selections, formal borough selections will be reviewed for state interests, with public notice, prior to conveyance.

## Procedures for Plan Modification and Amendment

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The land use designations, policies, implementation actions, and management guidelines of this plan may be changed if conditions warrant. The plan will be updated periodically as new data and new technologies become available, and as changing social or economic conditions place different demands on state land.

**Periodic Review.** The plan will be reviewed by the Northwest Area Planning team at least once every five years to determine if revisions are necessary. The plan review may include public meetings open to all interested groups and the general public. In addition, DNR will consult the planning team each year to determine whether a meeting should be held to address new information, new conditions, or plan implementation.

The Northwest Arctic Borough is beginning to work on its local comprehensive plan. When the comprehensive plan is completed and adopted, DNR will comply with the provisions of the plan consistent with the state interest. The periodic or annual review should address changes necessary to the Northwest Area Plan as a result of the borough's comprehensive plan.

**Changes to the Plan.** The method for changing the plan depends on the type of change required. There are three types of changes possible to a plan: amendments, special exceptions, and minor changes. Amendments and special exceptions are plan revisions subject to the planning process requirements of AS 38.04.065; minor changes are not. The Director of the Division of Land and Water Management (DLWM) determines whether a proposed change constitutes an amendment, a special exception, or a minor change. Changes to the plan may be proposed by agencies, municipalities, or members of the public. Requests for changes are submitted to the Northern Regional Office of the DLWM in Fairbanks.

**Amendments.** An amendment permanently changes the plan by adding to, or modifying, its basic intent. Changes in allowed uses, prohibited uses, policies, guidelines, and some implementation actions constitute amendments. For example, an amendment may close to new mineral entry an area that the plan designated to be open, allow a land use in an area where the plan prohibited it, or allow land to be opened to homestead entry in an area the plan designated for retention in public ownership. Plan amendments must be approved by the Commissioner of DNR.

**Special Exceptions.** A special exception does not permanently change the provisions of the plan, and cannot be used as the basis for a reclassification of the subunit. Instead, it allows a one-time, limited-purpose variance of the plan's provisions, without changing the plan's general management intent or guidelines. For example, a special exception may be used to grant an eligible applicant a preference right under AS 38.05.035 in a subunit designated for retention in public ownership. Special exceptions may be made if complying with the plan would be excessively difficult or impractical, or if it would be inequitable to a third party, and if the purposes and spirit of the plan can be achieved despite the exception. Special exceptions may be approved by the Regional Manager of the DLWM. The Regional Manager's decision may be appealed to the Director of DLWM, and the Director's decision may be appealed to the Commissioner of DNR.

Amendments and special exceptions must be accompanied by a written finding that explains the new information or new conditions that warrant the revision, describes the alternative course of action and the reasons for it, and includes inter-agency review and public notice of the proposed revision. This finding may be incorporated under AS 38.05.035. Plan revisions may require public meetings if the Commissioner decides that the level of controversy warrants it.

**Minor Changes.** A minor change does not modify or change the basic intent of the plan. Minor changes may be necessary to clarify, make consistent, facilitate implementation, or make technical corrections. Minor changes are made at the discretion of the Director of DLWM and do not require public review. The director will notify

planning team representatives when minor changes are made. Affected agencies will have the opportunity to comment on minor changes following notification; the comment period may be provided through existing interagency review processes for associated actions. If the agencies disagree with the Regional Manager's decision, the decision may be appealed to the Director of DLWM, and the Director's decision may be appealed to the Commissioner of DNR.

### **Recommendations for Further Study**

**DNR Statewide Goals.** Several of the statewide goals for DNR implicitly include subsistence activities and traditional uses. However, the goals do not clearly address the importance of these activities. When the statewide plan is updated, the DNR goals should be revised to clarify that subsistence activities and traditional uses are part of the goals for which state lands are managed.

**Remote Cabin and Settlement Programs.** Historically, settlement in remote areas has been either concentrated near communities or dispersed over wide areas. State disposal programs in remote areas offer neither choice. Because of ANCSA village selections, little state land exists near communities. Survey costs concentrate parcels in relatively small areas (1 to 4 townships). There is also little economic opportunity in disposal areas, and existing activities (trapping, hunting, fishing, guiding) may be threatened by the influx of new residents.

Demand for dispersed, accessible cabin sites exists in the Northwest Area, particularly from Nome residents. The public did not support the remote cabin permit program, because the term of the permit did not offer long-term ownership or title transfer, and because remote cabin sites must be ten miles from any road.

The department should review existing land sale and remote cabin permit programs to determine how the programs can better meet the needs of rural Alaska. DNR should recommend appropriate changes to the legislature, and adopt regulations to implement the changes.

**Kobuk River Study.** Agencies with jurisdiction along the Kobuk River corridor should develop recommendations for management of lands in the Kobuk River area. Detailed information about the economics of subsistence and recreation in the river corridor, the impacts of the various uses, and the management options available to address the issues should be considered. The river management study should be as specific as possible in its focus, and limit the issues addressed. Direction for management of state land in the Kobuk River area has already been addressed in the plan for grazing, agriculture, oil and gas leasing, mineral closures, remote cabins, and land disposals. The river management study should address, at a minimum, the following issues:

- Conflicts among uses of the river, particularly management objectives and guidelines for subsistence activities/traditional use and recreation use in the Kobuk River corridor.
- Roles of different land owners in providing land for these uses.
- Provision for, and maintenance of, public access sites, easements, and campsites.
- Identification of, and proposed solutions to, trespass problems.
- Identification and management of cultural resource sites.
- Recommendations for any land exchanges or administrative or legislative designations.

The study should be initiated within five years after adoption of the Northwest Area Plan, or after completion of the Northwest Arctic Borough's Comprehensive Plan, whichever comes first.

### **Recommendations for Field Staff and Enforcement**

This plan emphasizes multiple use. The plan relies on existing laws, regulations, and new guidelines to make as many uses compatible as possible. To ensure that these measures are effective, and to develop public confidence in the

state's ability to manage for multiple use, the laws, regulations, and guidelines must be enforced. Examples of actions likely to require fieldwork, monitoring, and enforcement include land sales, remote cabin permits, trapping cabin permits, leases for commercial recreation facilities, materials sales, and mining permits and leases.

DNR will take appropriate action against unauthorized uses of state land. Priorities for such action will be determined by the availability of funding and the severity of the impact of the unauthorized use on public uses, on public access, or on significant settlement activities on state land.

DNR places a high priority on monitoring and enforcing compliance with stipulations on leases, permits, and sales, and on taking action against unauthorized activities where these activities have a high probability of creating significant negative impacts to other important resources or uses. Field staffing and funding are currently inadequate to enforce the laws and guidelines on all 11 million acres of state land in the planning area. DNR's ability to enforce will depend on its budget. The department's budget requests will continue to reflect these priorities for monitoring and enforcement. The plan recommends that additional funds be dedicated to enforcement activities to support implementation of the new and continuing land management programs in the Northwest Area.

### Recommendations for Cooperative Agreements

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**Grazing Permits.** Grazing operations plans should become an essential component of grazing authorizations. Plans will be coordinated by the Alaska Soil and Water Conservation District through a cooperative effort among the applicant (herder) and affected land owners. Technical Assistance will be provided by the U.S. Soil Conservation Service. The complex land ownership pattern that exists in Northwest Alaska necessitates establishing a coordinated grazing permit application process involving the various affected land owners. The grazing operations plans should improve management of reindeer herding, and the coordinated application process

should simplify the management requirements of the herder and land owners.

**Shelter Cabins.** A system of shelter cabins should be established for public, non-profit use, in cooperation with federal and municipal governments. The need for emergency shelter or warm, dry lodging while traveling cross-country is well established in Northwest Alaska. Although state land is available for shelter cabins, funds and staff to implement such a construction program are not currently available. Cooperation will be sought with municipal or federal governments, Native corporations, or nonprofit organizations for construction and management of shelter cabins.

### Recommendations for Additional Access

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Easement atlases of existing legal access have been drafted to document legal access, help minimize trespass, and identify where additional access is needed to ensure future use of valuable resources on state land. The *Kotzebue Area Easement Atlas* is currently available, and the *Nome Area Easement Atlas* will be available in 1989.

Maps of existing legal access were reviewed to determine where additional access is needed to ensure future use of valuable resources on state lands. Of particular concern are areas with moderate to high surface and subsurface values on state-owned and state-selected lands, proposed land sale areas, and access to important habitat and harvest areas. In addition, protection of existing transportation routes between communities is a goal of the plan. In general, no additional access is needed at this time where there are existing or previously proposed 17(b) easements, state omnibus roads, navigable rivers, or trails across public lands. Areas needing additional legal access are listed below. No potential RS2477 rights-of-way have been identified for validation at this time to implement this plan. However, these recommendations for additional access do not affect the validity of RS2477s in the planning area in the future.

Additional legal access can be established in a variety of ways, including acquiring access or relocating existing 17(b) easements. The best



technique will vary from site to site and can be identified only through more detailed examination of individual sites. The list below identifies only the need for additional access, not the technique for providing it or the description of detailed routes.

**Transportation Corridors.** Three possible transportation corridors have been identified in the Northwest Area: the Western Access Corridor from Prospect to the Kougarok Road, the Chicago Creek coal-mining area to Kotzebue route, and the Northern Access Corridor to the Lik mineral deposit. No applications have been made for any of these routes. They are not being proposed for construction, but authorization for activities that could foreclose options for future development of these corridors should not be granted.

**Overlapping State and Native Selections.** Appropriate easements should be reserved when areas of overlapping state and Native selections are conveyed to Native ownership. The following are areas of particular interest for review: selections around Nome for access to mineral, recreation, and subsistence areas; selections affecting the proposed land sale areas at Kolliksak Lake and the Mauneluk River; and all areas used for intercommunity travel routes.

**Ear Mountain.** Existing legal access for the Ear Mountain area should be extended to state land along the American River Trail.

**Granite Mountain.** Existing legal access to Granite Mountain should be extended to state land from the Koyuk River.

Access concerns for other areas are addressed generally in Chapter 2 guidelines under *Transportation and Utilities*, *Trail Management*, and *Public Access* sections, and for specific existing trails or public access in Chapter 3 management units.

## Public Trust Doctrine

Under the Alaska Constitution, the state has special duties and management constraints with respect to state-owned land underlying navigable waters. The Alaska Constitution contains

provisions embracing the principles commonly known as the public trust doctrine. That doctrine, as it has evolved in court decisions over hundreds of years, requires the state to exercise authority to insure that the paramount rights of the public to use navigable waters for navigation, commerce, recreation, and related purposes is not substantially impaired.

The Alaska Constitution (Article VIII, sections 1, 2, 3, 6, 13, and 14) and Alaska Statutes (38.05.127 and 38.05.128) are the legal basis for applying the public trust doctrine in Alaska. This doctrine guarantees the public right to engage in such things as commerce, navigation, fishing, hunting, swimming, and protection of areas for ecological study.

The Constitution provides that "free access to the navigable or public waters of the state, as defined by the legislature, shall not be denied any citizen of the United States or resident of the state, except that the legislature may by general law regulate and limit such access for other beneficial uses or public purposes." Eliminating private upland owners' reasonable access to navigable waters may result in compensation.

Because 99 percent of Alaska was in public ownership at statehood, both federal and state laws providing for the transfer of land to private parties also provide for public access to navigable waters. Implementing the state constitutional guarantee of access to navigable waters under Article VII, Section 14, AS 38.05.127 requires that the state commissioner of natural resources must "provide for the specific easements or rights-of-way necessary to ensure free access to and along the body of water, unless the commissioner finds that regulating or eliminating access is necessary for other beneficial uses or public purposes."

It has never been held that any lands normally subject to the public trust doctrine in Alaska are exempt from it, including land occupied and developed.

These statutes and concepts are considered and used throughout this plan. Any management actions shall be consistent with the public trust doctrine as defined by the Alaska Constitution, statutes, court decisions, and public involvement.

